

ORDER 2001-12-4

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**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the **3rd** day of December, 2001

Essential Air Service at

Lynchburg, VA

under 49 U.S.C. 41731 *et seq.*

SERVED : December 6, 2001

Docket OST-2001-10791-4

ORDER ALLOWING SUSPENSION OF SERVICE

Summary

By this order, the Department is allowing Atlantic Coast Airlines, d/b/a United Express (Atlantic Coast or ACA), to suspend service between Lynchburg and Washington Dulles International Airport after January 3, 2002.

Background

On October 5, 2001, Atlantic Coast filed a 90-day notice of its intent to suspend its unsubsidized scheduled air service between Lynchburg and Washington, D.C. The carrier currently provides two round trips a day to Washington Dulles in 19-seat

Jetstream 31 equipment.¹ Prior to September 11 ACA had provided five round trips a day.

The community's EAS determination was last reviewed in 1984 in Civil Aeronautics Board Order 84-10-138 when the CAB designated Charlotte, North Carolina, and Washington, D.C. as the community's EAS hubs. Service to Washington, D.C. could be provided through any one of the three Washington D.C. area airports.

In addition to Atlantic Coast's current service to Washington, Lynchburg receives service to three other large hub airports, Atlanta, Charlotte, and Pittsburgh. As of December 2, the US Airways Express carrier Chautauqua Airlines is providing a total of four weekday and weekend round trips to US Airways' hub at Pittsburgh, while the US Airways Express carrier CCAir will be providing five weekday and weekend round trips to US Airways' hub at Charlotte. Service to Pittsburgh is provided in 30-seat Saab 340 turboprop aircraft, and service to Charlotte is provided in 19-seat Jetstream 32 turboprop aircraft. Three additional daily round trips are provided to Atlanta by the Delta Air Lines' code-share partner, Atlantic Southeast Airlines (ASA), d/b/a Delta Connection, using 30-seat Embraer Brasilia turboprop aircraft.

The Lynchburg Regional Airport is located just south of the City of Lynchburg in Campbell County. The airport is also relatively close to the Roanoke Regional Airport, which is located approximately 52 highway miles to the west. The principal communities served by Lynchburg Regional Airport are the city of Lynchburg and Campbell County. Other communities included in the airport's immediate service area include portions of the Counties of Bedford, Amherst and Appomattox, and the Towns of Appomattox and Altavista. An area map is attached as Appendix A.

Atlantic Coast Airlines serves Lynchburg under a contractual arrangement with United Air Lines where United pays ACA an agreed-to fee to provide service in the Lynchburg-Washington market and United receives the revenue generated from the service. According to the carrier's filing, United lost \$1,117,000 serving the Lynchburg-Washington market in the 8-month period that ended on August 31, 2001.

In its filing, Atlantic Coast has also requested an exemption to allow it to suspend service before the end of the full 90-day notice period, stating in part that it cannot continue to

¹ United Air Lines Internet website, December 1, 2001.

absorb economic losses for the entire 90-day period and that the community has access to other service options.

Community Response

On November 28, 2001, the airport manager filed a formal answer expressing the community's strong opposition to the 90-day notice filed by ACA. In addition, business leaders representing the community met with the Department's staff to discuss ACA's suspension notice. The community stressed the need, both formally and informally, for service to the Washington area as a general matter, and specifically because of the many international businesses located in Lynchburg and the access that Washington Dulles provides for international connections. The community's formal answer also argues that the loss of ACA's service threatens the continuation of the remaining service at the community, and that it was United Air Lines' decision and not ACA's to leave Lynchburg. In addition, the community asked the Department to invoke the provisions of Section 105 of the Air Transportation Safety and System Stabilization Act, P.L. 107-42, in order to require ACA to continue to serve Washington Dulles. Section 105 gives the Department authority to "take appropriate action to ensure that all communities...continue to receive adequate air transportation service." For the reasons we discuss below, we are unable to grant the community's request.

Decision

After careful consideration of all of the matters involved, we will allow ACA to suspend its service at Lynchburg as of January 3, the end of the 90-day notice period, at which time we will rely on the services by US Airways Express and ASA to satisfy the community's essential air service needs. However, we will deny ACA's request to suspend service prior to the end of the 90-day period.

The community notes that ACA and United have received payments under sections 101 and 103 of P.L. 107-42, and believes that the acceptance of those payments obligates ACA to continue service at Lynchburg. First, we must make clear that by its own words, section 105 is precatory, not mandatory. Second, any payments received under sections 101 and 103 are specifically intended to compensate carriers for (a) losses associated with government-ordered stoppages of service, such as occurred immediately after the September 11 attacks, and (b) incremental losses incurred through December 31, 2001, as a direct result of those attacks.

Our experience in implementing the compensation sections of the statute indicates that carriers are generally sustaining losses in excess of the compensation provided for

them, sometimes by substantial amounts. This experience has been substantiated by the Comptroller General who, in a letter report to Congressional requesters dated October 5, estimated industry losses through the end of the year at \$1.5 to \$5.5 billion *beyond* the \$5 billion in compensation that Congress appropriated. Under the circumstances, carriers have necessarily taken measures to restrain their system costs, including reductions on under-performing routes. The Airline Deregulation Act of 1978 granted carriers the ability to make adjustments to their domestic route networks, except in the case of essential air service, as discussed below. Impairing their ability to do so under the present circumstances, without just compensation for their losses, would raise very significant legal issues.

We recognize that the remaining service is not operated to Washington, which is designated as one of Lynchburg's two hubs in its essential air service determination. However, hub designations assume that the community would receive no service other than to the designated hub or hubs. If other service is in fact available when a carrier files notice to suspend its service, we consider whether the other service can meet the community's needs. In this case, we conclude that US Airways Express's service to Pittsburgh and Charlotte and ASA's service to Atlanta fully meet Lynchburg's continuing need for a link to the national air transportation system. Even without ACA's service, the Lynchburg Regional Airport will continue to receive substantial service to Charlotte, Pittsburgh, and Atlanta, thus ensuring continued access to the national air transportation system.

Although we have decided to allow ACA to suspend service at Lynchburg, we will deny ACA's request for an exemption from the 90-day notice provision contained in 49 U.S.C. 41734(a) to suspend service prior to October 31. The 90-day notice provision is intended to protect communities from abrupt losses of service, and we generally only grant exemptions from it with the consent of the affected communities. In this case, the Lynchburg community opposes such an exemption, and we will therefore uphold the community's statutory entitlement to the full 90-day notice period.

As a final matter, before Atlantic Coast suspends service at Lynchburg, we expect it to contact all passengers who hold reservations for flights scheduled after January 3, 2002, to inform them of the suspension and the availability of other service at Lynchburg, and to assist them in arranging alternate transportation.

This order is issued under authority delegated in 49 CFR 1.56a(f).

ACCORDINGLY,

1. We allow Atlantic Coast Airlines, d/b/a United Express to suspend its scheduled air service at Lynchburg, Virginia, after January 3, 2002;
2. We deny the request for an exemption from the 90-day notice period required by 49 U.S.C. 41734(a) that would have allowed Atlantic Coast Airlines, d/b/a United Express to suspend service at Lynchburg, Virginia, as of October 31, 2001;
3. We will rely on the services of CCAir, Chautauqua Airlines, and Atlantic Southeast Airlines to provide essential air service at Lynchburg, Virginia; and
4. We will serve copies of this order on the Mayor and airport manager of Lynchburg, Virginia, the Governor of Virginia, the Virginia Department of Aviation, Atlantic Coast Airlines, United Air Lines, US Airways, and Delta Air Lines.

By:

READ C. VAN de WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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Lynchburg Area Map

